

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

UNITED STATES OF AMERICA .
vs. . DOCKET RWT-10-0171
GREGORY WIMSATT . GREENBELT, MARYLAND
. OCTOBER 26, 2011

TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE ROGER W. TITUS
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE GOVERNMENT: DEBORAH JOHNSTON, ESQ.
ASSISTANT U.S. ATTORNEY

FOR THE DEFENDANT: RICHARD A. FINCI, ESQ.

Court Reporter: Sharon O'Neill, RMR
Official Court Reporter
United States District Court
6500 Cherrywood Lane
Greenbelt, Maryland 20770
301-344-3227

1 THE COURT: Good morning.

2 VOICES: Good morning, Your Honor.

3 THE COURT: Please be seated.

4 MS. JOHNSTON: Good morning, Your Honor. Your Honor,
5 we're here in the matter of United States vs. Gregory Wimsatt,
6 RWT 10-0171. I'm Deborah Johnston, representing the
7 Government. Soon to be seated with me is Task Force Officer
8 Dave Papalia.

9 THE COURT: I remember you. You used to work here.

10 MS. JOHNSTON: I did.

11 THE COURT: Welcome back.

12 MS. JOHNSTON: Thank you, Your Honor.

13 MR. FINCI: Richard Finci on behalf of Gregory
14 Wimsatt, Your Honor.

15 THE COURT: All right. Counsel, have you both had an
16 opportunity to review the Presentence Report, and in your case,
17 Mr. Finci, to review it with your client?

18 MR. FINCI: Oh, yes, Your Honor.

19 THE COURT: All right. And I have received and
20 reviewed your memorandum and the attached report from Neil
21 Blumberg, who I have known for many years, very highly
22 qualified psychiatrist. Are there any disagreements between
23 the parties as to the factual content of the presentence
24 report?

25 MS. JOHNSTON: No, sir.

1 MR. FINCI: None, Your Honor.

2 THE COURT: All right. And is there any disagreement
3 between the parties as to the Probation Officer's
4 recommendation to me that the total adjusted offense level,
5 after acceptance of responsibility, should be 21?

6 MS. JOHNSTON: No, Your Honor.

7 MR. FINCI: No, Your Honor.

8 THE COURT: I assume there is no disagreement as to
9 the criminal history category of one, correct?

10 MR. FINCI: Shouldn't be, Your Honor.

11 THE COURT: Well, I have applied the guidelines,
12 which is step one, and that produces at offense level 21 and a
13 criminal category one, a guideline range of 37 to 46 months.
14 Is there going to be any motion by the government under 5K1.1?

15 MS. JOHNSTON: No, there is not, Your Honor.

16 THE COURT: Okay. All right. Well, then, that is
17 the recommended range under the guidelines. I'll be glad to
18 here from you, Mr. Finci, with regard to sentence.

19 MR. FINCI: Yes, Judge. Thank you. Judge, I know
20 that you've received and carefully reviewed the sentencing
21 memorandum and Dr. Blumberg's report.

22 We're asking the Court to consider 18 U.S.C, section
23 3582(a), and the Tapia case, in fashioning a sentence in this
24 case that focuses on my client's need for mental health and
25 drug rehabilitation.

1 I'll describe as his extreme need for mental health
2 and drug rehabilitation, drug treatment, as being paramount in
3 light of what is clearly a demonstrated long term drug
4 dependency, a co-occurring major mental health issue, as
5 documented and established with evidence by Dr. Blumberg, and
6 balance that against what was his role in the conspiracy in
7 this case, the overall time that he has already spent
8 incarcerated, both in CTF, in SuperMax, in a drug program and
9 on electronic home monitoring, since the date of his arrest,
10 over a year ago in this case, in fashioning the sentence.

11 While I don't want to repeat what I could not say
12 better than I could write, and have already written and
13 submitted to Your Honor, I think that it would be apropos to
14 make some personal observations of the time spent with the
15 defendant and that's what I would like to focus on, if I could,
16 Judge.

17 THE COURT: All right.

18 MR. FINCI: I've had a lot of time to spend with this
19 young man and his family. And you know he's 26 years old. He
20 comes from, as you can gather from the Presentence Report, a
21 loving family, a family that believes in unconditional love for
22 all of the children in the family.

23 And you've read in there that there's been some
24 problems with this family. While they all love each other, my
25 observations have been that at times there is high conflict

1 among my client and his parents.

2 It's been this sort of high level conflict has been
3 going on for a long time. In this case, a result of extreme
4 mental health problems and drug problems that simply have not
5 been fully and adequately dealt with.

6 My client is a night owl. He has night owl hours.
7 He has a group of what his parents describe to me as, I will
8 call them sketchy friends and sketchy activities that he
9 involved himself in over a long period of time that have led to
10 these sort of conflicts.

11 He has been unable to maintain steady employment.
12 Judge, while this is a family of unconditional love, when Gregg
13 Wimsatt was arrested, his parents were unwilling to act as
14 third party custodians. I found that remarkable.

15 This family has always provided a loving home and
16 environment, but they had decided that there was just too many
17 problems with Gregg. They were afraid that he just could not
18 control his mental health problems, and his opiate abuse and
19 his marijuana abuse, and that they simply would not act as
20 third party custodians.

21 Can you imagine being from a loving family that
22 believes in unconditional love, and being in a situation as a
23 parent, and as a child, when parents would not act as third
24 party custodians. I couldn't imagine it. To me it underscored
25 the extreme problems that Gregg had.

1 It took months for the opiate abuse and dependency to
2 wane. The toxins in the system, Judge, I have observed this
3 from extremely dependent individuals in the past. It takes
4 quite some time for them to start thinking straight. That
5 happened, as I mentioned in the sentencing memorandum, not when
6 my client was at the CTF, during his initial 45 days, not while
7 he was at the Carol Porto Treatment Center, not after he was
8 incarcerated at SuperMax in Baltimore.

9 Something like three or four months, after his
10 parents noted a change, a rationality, a change in thinking,
11 and they finally recognized that he had finally removed all
12 those toxins from his system in a way that they could now look
13 at him and could now support third party custodianship.

14 It was at that point in time that the forensic
15 evaluation, psychiatric evaluation, was recommended, and I
16 think, Judge, that Dr. Blumberg had really documented how the
17 vicious cycle of drug dependency and mental health problems in
18 Gregory Wimsatt's life has led him to where he is now, to the
19 rock bottom, where he is now to be sentenced in Federal Court
20 for a marijuana conspiracy.

21 Dr. Blumberg shows you how, and explains to you,
22 Judge, how the depression and other issues of a very severe
23 nature, trauma that he has endured, leads to self-medicating,
24 leads to increasingly high levels of addiction and dependency,
25 eventually maybe to a drug treatment program, which may then

1 lower the level of dependency and addiction, but then
2 eventually back to depression again and the whole cycle starts
3 over.

4 And what you see, Judge, in this scenario is that if
5 you don't address both problems, then neither problem gets
6 resolved. And that is where Gregg Wimsatt stands here today at
7 age 26. A young man who has never addressed both of his
8 problems, his mental health condition and his drug dependency
9 condition, in a way that will lead to him being a constructive
10 and contributing member of society, which is in the end I think
11 what everybody here wants.

12 He got some help while he was out at the Kolmac
13 Clinic. He did well. He continued to test negative. He is
14 off to a good start, but still needs to be in an environment
15 where he receives co-occurring treatment.

16 He's a smart young man, Judge. He has a lot of
17 potential to be productive and law abiding, to make a living,
18 but he needs much more. And so we've recommended, we've
19 identified a program outside of Atlanta, Georgia, called the
20 Ridgeview Institute. It's a psychiatric hospital that has both
21 inpatient and outpatient treatment on the premises, a place
22 where Gregg would be removed from the environment here, where
23 whatever distractions are applicable to him will not be there,
24 and where he can recover and where his parents, who have the
25 resources to send him there, are willing to send him. They're

1 willing to pay what is necessary for Gregg to recover.

2 And so I hope the Court, in evaluating the 3553
3 factors in this case, will agree that in light of what has
4 happened in this case and where we are today, the need for
5 medical treatment, medical care for his psychiatric condition,
6 the need for drug treatment, and in general for correctional
7 treatment, is the factor that the Court should focus on in
8 fashioning a reasonable sentence in this case, and I hope the
9 Court will adopt the recommendation put forth in the sentencing
10 memorandum, that the Court can handle it one of two ways.

11 I would suggest the Court sentence my client to
12 prison for essentially time served, place him on supervised
13 release for the maximum period of time available to the Court,
14 and as a condition of supervised release, impose upon the
15 defendant that he successfully complete, attend, go through the
16 entire Ridgeview Institute drug treatment, inpatient drug
17 treatment program, and follow-up after care for the period of
18 time required by the Institute until released, that he report
19 directly to that program as soon as a bed is available, and
20 then abide by whatever other conditions of supervised release
21 that the Court feels it should impose in this case. Thank you,
22 Your Honor.

23 THE COURT: All right. Would your client like to
24 address the Court? I'd be glad to hear from him.

25 MR. FINCI: I'm nearly positive that he would. One

1 other thing, Judge. My client has had a medical condition, has
2 a back condition. There was a violation noted for opiates on
3 October 14th in the Pretrial Report. My client had a
4 prescription, Judge, from, for a drug known as Opana,
5 O P A N A, which has, which was prescribed by his physician,
6 and it has some opiates in it, opiate content in it, and I have
7 the prescription bottles. I just want Your Honor to know that
8 he had a prescription. He tested positive one time when he was
9 on this prescription from his back condition.

10 THE COURT: Is that oxycodone?

11 MR. FINCI: No. No. Opana is a -- it's called
12 oxymorphone HCL, is what the chemical content of it is,
13 according to the prescription.

14 THE COURT: I was asking about his testing on
15 October 14th that reflected oxycodone.

16 MR. FINCI: I would assume that oxycodone, and I
17 don't really know, Judge, I assume oxycodone, oxymorphone, I
18 more, oxycodone, I don't really know. I assume that they're
19 the same. They have the same positive opiates. I don't know
20 how specific the Pretrial is. There are other medications as
21 well. This is the one that he -- he had another prescriptions.

22 THE DEFENDANT: I didn't know the name of it.

23 MR. FINCI: He has a prescription for oxycodone that
24 was filled about a month prior to that, and that as far as the
25 timing of which was drugs he took, he thought it was the Opana.

1 THE COURT: What is the name of drug that you just
2 handed to Ms. Johnston?

3 MS. JOHNSTON: Your Honor, one is for oxycodone. The
4 prescription date is August 3rd of 2011, and one is for
5 alprazolam, which is September 2nd of 2011. Alprazolam, I
6 think, is a schedule IV narcotic that you very often see people
7 who are abusing oxycodone, they will also take this drug as
8 well.

9 MR. FINCI: That drug, I believe, is a Xanax, Judge.

10 THE COURT: What?

11 MR. FINCI: Xanax. It's Xanax.

12 MS. JOHNSTON: It's a schedule IV drug, but you'll
13 see people take that as well.

14 MR. FINCI: Yes, Judge. My client would like to
15 address the Court.

16 THE COURT: All right. I'll be glad to hear from
17 him.

18 THE DEFENDANT: Well, Your Honor, I mean, I guess my
19 whole life, I guess until I was 12 years old, I have had, I
20 guess when I started going through puberty, you know, I have
21 noticed like that I was different from other people that I
22 knew, and I just, I knew I had issues and stuff. But I was
23 like, you know, I guess I didn't know what was normal, because
24 I didn't know, you know, I can only think in my own brain.

25 I don't know what someone else thinks and how people

1 are supposed to feel and, but I notice, like, as I'm older now,
2 through this situation, when I think back on my past that, you
3 know, this is just been a self-destruction, vicious cycle that
4 I have been over and over again.

5 You know, drink by myself, you know. I was 12 years
6 old. I would -- I smoked marijuana. You know, I was doing
7 drugs pretty much for all up until this Court, you know, I
8 never seen a psychiatrist. I have never been through mental
9 health until, you know, later on in my life and, you know, I
10 just... my eyes are opened up a lot, even though I'm still
11 struggling, and I still, I know I have a problem and, you know,
12 it's really hard for me too, because I don't, you know, I feel
13 lost. Sometimes I don't even know if there is a solution for
14 it, you know.

15 Like, sometimes it's just really hard. And, you
16 know, like through this whole court process, you know, there is
17 a lot of things I never thought about. When I was
18 incarcerated, you know, when my head got to clear up, you know,
19 I definitely saw that I wasn't only hurting myself, but people
20 around me. So that's what, you know, made a big impact on me.

21 But still, at the same time, it's like, I feel like
22 this curse that I have, or whatever it is, it's hard for me to
23 even explain to people, because I don't understand it. So,
24 but, you know, I see my brother, you know, he has been in and
25 out of jail, you know, for he will be in, he will be out, for

1 the same thing. He has drug problems.

2 You known, my little sister, she's actually doing
3 good now. She went to Ridgeview, but she has had drug
4 problems. You know, my granddad was in a mental hospital and,
5 you know, my mom's side, I don't know what's on her side, but
6 there is something. I don't know if it's genetic. I don't
7 know what it is but, you know, I definitely want to fix it.

8 I don't want to, you know, just come out of this
9 situation the same person I was before. So, you know, my dad
10 didn't even want to come today because, you know, he was
11 like -- he gets -- he is hurt seeing my brother go through this
12 and -- Sorry. When I was incarcerated, I guess, you know, I
13 definitely, you know, learned a lot like, you know, I felt
14 punishment on, you know, deep levels, you know. I lost the
15 girl that I love for six years and, you know, and -- Sorry.

16 You know, like, I realize that I guess I've been
17 self-destructive. I was okay with that, but I'm not okay with
18 hurting the people around me. So, you know, I have a four year
19 old son and this is affected him a lot. I just want to be able
20 to do, to get better and be there for him.

21 So, I don't know. I mean, I'm just trying. I don't
22 know. I'm just trying to explain what has gotten me here. I'm
23 trying to do it in, you know, a short period of time but, you
24 know, it's hard, I guess.

25 I'm sorry that, you know, that everything I was

1 involved in and, you know, I didn't mean to harm anybody or,
2 you know. I just want to get through this situation and, you
3 know, be able to be productive and support my son. So,
4 sometimes it's like I feel like I may not be able to be fixed,
5 so. I had more things I was going to say, but it's like all
6 slipped my mind. But I just want to break this cycle.

7 Like, it was, you know, like you said, it was very
8 hard for me to -- when my parents wouldn't get me out, you
9 know, (crying) I'm sorry.

10 You know, I just want to fix this problem. You know,
11 I don't know, you know, like I said, I guess, you know, I mean
12 it's been very hard for me to work and, you know, just do jobs,
13 like I get a job somewhere and then I would have a bad day or,
14 you know, I get fired or something, you know, so I haven't
15 been real reliable, I guess, you know.

16 And, you know, I tried, like, I was going to the
17 first things that I did when I actually made some money, what I
18 was the one to put myself to see a psychiatrist, you know, and
19 in this whole situation happened. I was being already
20 miserable and, you know, I guess I had a situation where I
21 could have gotten myself out of the situation, but I was
22 already miserable.

23 So, I was just, like, being miserable there or here.
24 It doesn't matter, so, you know. I guess I didn't take the
25 selfish way out, but I just figured, you know, I just wasn't

1 happy then. I'm sorry. I just can't. My whole thoughts are
2 just mixed up right now.

3 You know, I just want to apologize to the Court but,
4 you know, anything I can do to make it up, you know, I will do
5 it. So, you know, I just want to get through this situation
6 and be a different person. I don't, you know, want to come out
7 and just have the same cycle. I'm sorry. I just lost it.

8 THE COURT: All right. Have you said everything you
9 would like to say?

10 THE DEFENDANT: I feel like that is 10 percent of
11 what I was going to say, but I couldn't keep myself together,
12 you know. Sorry, but, you know, I just can't think right now.
13 Could I come back up or something? I just lost it.

14 THE COURT: I mean, you have one be opportunity.

15 THE DEFENDANT: I'm sorry. Like I said, 12 years
16 old, been doing drugs my whole live. I'm sorry. Just, you
17 know, the way I saw this, I'm sorry. Just trying to get by
18 tomorrow, so I was just trying to medicate myself. The only
19 way that would support that was what I was doing. So, I don't,
20 you know, I don't want excuses or anything. I don't want pity.

21 I guess, like I said, when I was younger, you know, I
22 was embarrassed with my situation, and I just saw it as a
23 weakness so -- I'm sorry.

24 THE COURT: All right. Well, thank you, very much,
25 sir. All right. Ms. Johnston.

1 MS. JOHNSTON: Yes, Your Honor. You know, I
2 understand that Mr. Wimsatt has a drug problem, and I feel
3 deeply, deep sympathy for his parents, who are suffering as a
4 result of his activities and his behavior over the last several
5 years, but we are here before the Court because Mr. Wimsatt had
6 pled guilty to participating in a conspiracy to distribute
7 significant quantities of marijuana, not because he's a drug
8 user, but because he was engaged in the business of selling
9 marijuana.

10 Even in his statement to Dr. Blumberg, he
11 acknowledged that after he was robbed, while operating a
12 gambling house at age 22, he began selling drugs, so he has
13 been selling marijuana since age 22.

14 He now stands before the Court at age 26. He
15 certainly was not concerned about using drugs when, on
16 April 18, 2008, when he was stopped by the police because of
17 his driving under the influence.

18 He brags to them about how, just a week earlier he
19 was stopped by Montgomery County Police and arrested with
20 14 pounds of marijuana, corresponding to the act that he pled
21 guilty to the statement of facts, the April 7, 2008 traffic
22 stop, when he had 12 pounds of marijuana.

23 So, we're seeing two sides of Mr. Wimsatt today. We
24 have him painted as this poor individual who, from age 12 has
25 been using drugs, and because of that use of drugs this Court

1 should not sentence him to incarceration, should not give him a
2 sentence even within the guideline range but, instead, the
3 Court should do what the courts have done repeatedly to this
4 man, and that is give him another chance, okay, and we're doing
5 that here in this court, because under the Sentencing
6 Guidelines, his four prior involvements with the criminal
7 justice system are not counted in this criminal history record,
8 because they were drug activities, they're considered to be
9 part of his drug conspiracy activities, so he doesn't get an
10 increase in his criminal history.

11 He should be standing before the Court, had those
12 crimes been counted, facing a guideline range of 46 to 57
13 months, instead of the 37 to 46 months. But what has happened
14 with Mr. Wimsatt, since age 22, or even age 18, what happens to
15 him is he goes into court, he gets a probation before judgment
16 at age 18.

17 At age 22, in April, 2008, after having had that
18 traffic stop with the 12 pounds of marijuana, he now gets
19 arrested again, and this time he has \$7,100 cash in his pocket.
20 Okay. Mr. Wimsatt was able to work and operate a business. He
21 choose to operate an illegal business, and that was
22 distributing marijuana.

23 And he was doing quite well by it. Made 71 --
24 walking around with \$7,100 cash in his pocket and bragging to
25 the officers about having been stopped with all that marijuana

1 just a week before. This isn't some junky who is going out
2 shoplifting so they can get their next fix of heroin. This is
3 somebody who was a big man by selling marijuana, bragging to
4 the officers, had \$7,100 in his pocket.

5 The next year, at age 23, again, he's involved and
6 charged with possession with intent to distribute marijuana
7 and, once again, he's given a break through great
8 representation by legal counsel in the state court in
9 Montgomery County.

10 And, indeed, in that case he's driving around in his
11 Mercedes and he has a fancy gadget on his front and back
12 tires -- tags, so he can cover them up should he want on the
13 flee from the police or have nobody recognize him. So he
14 drives around in his Mercedes, although he is not able to have
15 a -- maintain regular employment, still being involved in
16 selling the drugs, because we know from what he told Dr.
17 Blumberg, he was selling drugs since age 22.

18 And then, again, again at age 24, once again he gets
19 involved with the police and is involved in reckless driving
20 and having possession of paraphernalia.

21 A second time, that happens December 10, 2009. A
22 week later, once again, he's involved with the police. And in
23 that instance, he's again in possession of paraphernalia and
24 possession of marijuana and prescription drugs without
25 labeling. He is placed on probation. His sentence is once

1 again suspended, and he is given 90 days of supervised
2 probation.

3 But does Mr. Wimsatt comply with his conditions of
4 supervised probation? No. His probation is violated, and his
5 probation, he serves some time in jail, 20 days incarceration
6 then, and his probation is closed unsatisfactorily. But he
7 continues at that point to be engaged in his business of
8 distributing drugs, because he tells that to Dr. Blumberg.

9 So, now, we come here in this Court, in Federal
10 Court, and he now says to the Court "I have a drug problem. We
11 need to fix it. I can't hold a job." He wants to break the
12 cycle.

13 There is a way to break the cycle for this defendant,
14 and the way to break the cycle for this defendant is to impose
15 a significant period of incarceration. And I suggest to the
16 Court that that significant period of incarceration is 46
17 months, which is the top of the guideline before the Court, but
18 is also the bottom of the guideline he would be facing if his
19 prior convictions had applied.

20 And I suggest that to the Court because in the Bureau
21 of Prisons Mr. Wimsatt will be required to have a job, and/or
22 attend educational programs. He will be compelled to live a
23 disciplined life, something that he has not done to this date.

24 He will be required to go and work every day, to get
25 up out of bed, have a job in the institution, go to classes in

1 the institution. He will have the structure that he needs,
2 that he hasn't to this point.

3 To this point everyone has said "Okay, Mr. Wimsatt.
4 Let's give you counseling." We have so many people who come
5 before this Court with drug problems who haven't had the
6 opportunities that Mr. Wimsatt had.

7 By my count, in going through Dr. Blumberg's report,
8 and I have known Dr. Blumberg probably as long as Mr. Wimsatt
9 has been alive, but he has had treatment with a doctor, one,
10 two, three, four, five, at least six different facilities,
11 seven actually, different facilities and/or doctors have
12 treated him.

13 In terms of his dealing with these people, even when
14 he was seeing the doctors, he still smoking marijuana. Some of
15 the therapists he felt didn't help him, because they didn't
16 know how to deal with his depression. He felt one doctor don't
17 care.

18 All along, he's putting the blame on other people for
19 his problems. Even when he was placed at the treatment
20 facility as a result of his pretrial release in this case, he
21 was discharge from that treatment facility because he had a
22 positive marijuana test.

23 He now, in spit of saying he is addicted to all of
24 these drugs, he now goes to other drugs and gets more
25 oxycodone. He is now on pretrial release. He has a drug

1 problem, he's still taking the drugs he is addicted to. He's
2 not getting off of the drugs. He hasn't gotten off of the
3 drugs. He's continuing to get the same drugs that Dr. Blumberg
4 says he has a problem with.

5 Your Honor, in terms of the 3553 factors, the Court
6 can consider a number of things, not just treatment of the
7 defendant, but the Court is to consider the nature and
8 circumstances of this offense and his history and
9 characteristics. In this instance we have an individual who
10 has acknowledged that he had been involved in distributing
11 marijuana since age 22, and that that has continued over a
12 period of time.

13 He has engaged in that business over that period of
14 time, in spite of multiple brushes with the law, in spite of
15 being placed on probation, he has continued to engage in this
16 illegal activity, this illegal business.

17 For that reason, he needs to have a sentence that
18 reflects the seriousness of the offense, but also sends a
19 message and promotes respect for the law. What kind of respect
20 is he going to have for the law if this Court does what
21 Mr. Finci asked him to do? "Oh, I served 160 days in a local
22 jail. The Court again is going to put me on probation, just
23 like I've gotten before in Montgomery County." That does not
24 promote respect for the law.

25 What promotes respect for the law is to tell Mr.

1 Wimsatt "You have violated the law by engaging in this
2 marijuana distribution, and you need to be punished for that,
3 and I am going to treat you consist with the way other
4 individuals with your -- with your same sentencing guideline
5 range, characteristics, and I am going to impose a sentence of
6 imprisonment."

7 That sentence of imprisonment will do a number of
8 things for Mr. Wimsatt. One, it will give him some respect for
9 the law. Two, it will provide a just punishment for an
10 individual who over a series of years, at least from the
11 statement of facts, three years, and consistent with his
12 history to Dr. Blumberg, three to four years. It will send him
13 a message that you have to be punished when you engage in these
14 kind of violations of the law.

15 It will also deter his future conduct, because
16 obviously, periods of probation have not deterred his conduct
17 in the past.

18 Three, it will give him what he really needs, and
19 that is the ability to develop some discipline and some
20 structure in his life, to have to go to a job, to have to
21 comply with rules and regulations in a structured environment,
22 something that he does not have and will not have if he's
23 released at this point on probation.

24 In addition to providing deterrence, it also will
25 protect the public from further crimes by this defendant. He

1 has not done well on probation. He hasn't done well on
2 pretrial release. Again, now we have a positive urine test for
3 oxycodone. I don't know how you can justify giving an addict
4 oxycodone when he's supposedly getting himself cleaned up and
5 getting off of those drugs. He continues to take the drugs
6 that Dr. Blumberg says he needs to be weaned from.

7 We would ask the Court at this point to recognize the
8 sentencing guidelines, that they have taken into account any
9 number of factors. They have not taken into account the fact
10 that he can commit the offense in this case while on probation
11 for a prior offense. They have not taken into account his
12 prior criminal history. And what's most important here is a
13 message has to be sent to Mr. Wimsatt, and that message has to
14 be that you don't violate federal laws.

15 Mr. Wimsatt needs to pay for the crime he has
16 committed, and that's not an isolated case of a failed
17 marijuana here, but it's engaging in that business over a
18 period of approximately three years, and doing it in huge
19 quantities of marijuana.

20 In addition to that, and as an aside, I would note to
21 the Court that his 161 days in jail, here in this report to Dr.
22 Blumberg, he admitted using heroin while in those two
23 facilities. So, so much for learning a lesson from being in
24 jail. And that, Your Honor, is on, I think, page four of Dr.
25 Blumberg's report. So this man has not learned his lesson.

1 Has not learned his lesson, if he's still doing drugs while he
2 is incarcerated on the federal charge.

3 So I suggest to the Court that the best place for Mr.
4 Wimsatt is in the Bureau of Prisons, where he can get treatment
5 for all of his psychiatric and drugs problems. There they have
6 programs for people with those problems. The Bureau of Prisons
7 is focused on making sure that people, when they leave the
8 Bureau of Prisons don't come back to court.

9 And one of their goals is to decrease recidivism, and
10 they have a number of programs that provide individuals with a
11 second chance opportunity that, perhaps, Mr. Wimsatt can
12 benefit from. But Mr. Wimsatt needs to pay a price for what he
13 has done, and he also needs the opportunity to develop the
14 discipline that he will have in the Bureau of Prisons.

15 So, for those reasons, we would ask the Court to
16 impose a sentence of incarceration within the guidelines, and
17 would suggest to the Court that a 46 month sentence at the top
18 of the guideline range is appropriate, given the fact that he
19 was on probation when he committed this offense, and his
20 criminal history does not reflect his prior criminal
21 involvement.

22 THE COURT: All right. Thank you, very much. All
23 right. The defendant comes before me today for sentencing
24 after entering a plea to a single count of conspiracy to
25 distribute and possess with intent to distribute at least

1 50 kilograms of marijuana.

2 I have applied the guidelines. I have considered the
3 argument of counsel and the defendant's allocution.

4 The sentencing guidelines provide for arrange of
5 sentence from 36 to 46 months, and that is, as counsel are
6 aware, the beginning, not the ending point of sentencing.

7 What I am required to do is to examine the factors
8 set forth in section 3553 of Title 18 of the United States
9 Code, and determine whether a sentence within the guideline
10 range would be sufficient but not gather than necessary to
11 comply with the purposes set forth in subsection (a)(2). So I
12 will review those factors and then make a determination of
13 whether a sentence in the guideline range would be sufficient
14 but not greater than necessary. And, if not, determine whether
15 another sentence would be more consistent with the factors set
16 forth in section 3553.

17 I'm required to consider the need for the sentence
18 imposed to reflect the seriousness of the offense. This is not
19 a minor offense. This is a person involved in very significant
20 levels of marijuana distribution. This is not somebody who is
21 a casual user who got some extra stuff for his buddies.

22 These are major levels requiring connection was
23 people outside the country, to be able to arrange quantities of
24 marijuana of this size. That is an extremely serious offense,
25 and you look at what's going on with drug cartels in Mexico and

1 you can see what kind of people are supplying these drugs, so
2 it's not a minor matter.

3 Second, I'm required to consider the need to promote
4 respect for the law and to afford adequate deterrence to
5 criminal conduct.

6 It is clear in this case that this defendant has a
7 record, at a relatively youthful age, that clearly reflects
8 that he has not been deterred. He has not shown respect for
9 the law, and he has engaged in repeated criminal activity, even
10 though he has gotten repeated breaks from the criminal justice
11 system.

12 I am required to consider the need to protect the
13 public from further crimes of the defendant, and that is a
14 factor that would argue in favor of incarceration, because he
15 is, at least so far, an unrepentant drug dealer, dealing in
16 very large quantities of marijuana.

17 I am required to consider the need to provide him
18 with needed educational or vocational training, medical care or
19 other correctional treatment in the most effective manner. I
20 conclude that while Ridgeview Institute is a very respected
21 organization, that is something that would have been more
22 appropriate for him when he began this series of criminal
23 activities, not after he has been through the Court system so
24 many times, and I conclude that while the Ridgeview might be an
25 appropriate place for him to utilize once he's released from

1 incarceration, it is not a proper alternative to a guideline
2 sentence.

3 I am required to consider the need to avoid
4 unwarranted sentence disparity among defendants with similar
5 records that have been found guilty of similar conduct. And
6 that, of course, is one of the principle roles that the
7 guidelines play, and in this case the guidelines have
8 effectively attenuated a lot of what is set forth in his
9 criminal history, because it is considered part of the
10 conspiracy. But Ms. Johnston points out that were it not for
11 not counting some of these earlier matters, he would have been
12 in a higher criminal history category.

13 Finally, I'm required to consider the need to provide
14 restitution to any victims of the offense, and that's not a
15 factor that I can seriously address in this case, but that does
16 mean there has not been community hard by virtue of the
17 activities of the defendant.

18 Having considered all of those factors, I conclude
19 that, first of all that a guideline sentence would be
20 sufficient but not greater than necessary to meet the factors
21 set forth in section 3553 (a)(2) and I, therefore, do not
22 believe that a variant sentence would be appropriate in this
23 case.

24 Having considered all of those factors, and the
25 record of the defendant, I conclude that a sentence of 42

1 months would be appropriate. I think he needs a significantly
2 structured environment to deal with his mental health and
3 addiction issues, and he does have a significant amount of time
4 he has already been incarcerated that he will get credit for, of
5 course.

6 I will recommend that if he is eligible, that he
7 participate in the 500 hour residential drug abuse program in
8 which if he is eligible for it and he succeeds in participating
9 in it could reduce his sentence by as much as a year.

10 I will also recommend to the Bureau of Prisons that
11 he receive mental health counseling and treatment while he is
12 incarcerated. Is there any request, Mr Finci, for a place of
13 incarceration recommendation.

14 MR. FINCI: Your Honor, it's my believe that locally
15 in Cumberland they have the residential drug program.

16 THE COURT: They do. They do.

17 MR. FINCI: So I would ask that Cumberland be --

18 THE COURT: I will recommend to the Bureau that it be
19 Cumberland. That's only about two and a half hours away from
20 here. I will place him on a period of supervised release of
21 three years. I will impose the standard and mandatory
22 conditions of supervision, with the additional provision that
23 he participate in a treatment program relating to substance
24 and/or alcohol abuse, that he participate satisfactorily in a
25 mental health treatment program, that he provide the Probation

1 Officer with access to any requested financial information,
2 that he satisfactorily participate in a vocational or
3 educational program, which is quite important, because he
4 really hasn't been doing except criminal activity since he
5 reached the age of 21.

6 I will direct that he forfeit to the United States
7 the matters that were seized from the him, the \$32,000, the
8 five time zone wrist watch, the diamond fashion ring, all that
9 are set forth in the plea agreement.

10 I will require, if he has not already done so at the
11 time of his release, that he pay the special assessment of
12 \$100. I will not impose any fine in light of his apparent lack
13 of any assets at this time, and I will impose the mandatory
14 special assessment of \$100.

15 The specific items to be forfeited are those that are
16 set forth in paragraph 11 on page five of his plea agreement
17 and those will be incorporated into the criminal judgment.

18 I want to advise the defendant that he has a right to
19 appeal the sentence that I have just imposed to the United
20 States Court of Appeals for the Fourth Circuit. If you wish to
21 appeal, you must do so within 14 days of today's date, or your
22 right to appeal will have been waived.

23 If you're unable to pay the filing fee for the
24 appeal, there are procedures that the Clerk of the Court, or
25 Mr. Finci can explain to you that have to be waived.

1 I will point out that in paragraph 14 of your plea
2 agreement, on page six, that you have waived your right to
3 appeal your conviction. You have already waived your right to
4 appeal the sentence, unless it is unlawful or unless the
5 sentence imposed utilizes an offense level above 21.

6 Since the offense level utilized in this case is 21,
7 there is a contractual restriction on your right to appeal
8 your sentence.

9 To the extent that you have any remaining rights to
10 appeal that have not been waived by contract, you must initiate
11 an appeal within 14 days. Do you understand that, sir.

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Anything further, Ms.
14 Johnston?

15 MS. JOHNSTON: Your Honor, I have a Consent Order of
16 Forfeiture for the --

17 THE COURT: Yes. Hand that to me.

18 MR. FINCI: I have reviewed the Order, Judge. It's
19 appropriate in light of the plea.

20 THE COURT: The outer limit for surrender will be
21 December 12th.

22 MR. FINCI: December 12th, Judge?

23 MS. JOHNSTON: Your Honor, the Government would move
24 to --

25 THE COURT: Ms. Johnston, you're talking in the

1 opposite direction.

2 MS. JOHNSTON: I'm sorry.

3 THE COURT: My wife does that to me all the time. I
4 can't hear her either.

5 MS. JOHNSTON: I apologize, Your Honor. The
6 Government would move to dismiss the pending indictment as it
7 applies to this defendant. He pled guilty to a superseding
8 information.

9 THE COURT: All right. That will be granted, and I
10 will sign the Consent Order of Forfeiture and direct that that
11 be filed.

12 MS. JOHNSTON: Thank you, Your Honor.

13 THE COURT: All right. Thank you, very much. If you
14 could clear out quickly, we have a jury trial that's resuming.

15 MR. FINCI: Your Honor, I'll see you tomorrow.

16

17 COURT REPORTER'S CERTIFICATE

18 -oOo-

19 I certify that the foregoing is a correct transcript
20 from the record of proceedings in the above matter.

21

22 Date:

23

/s/

24

Sharon O'Neill

25